UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16

Dallas, Texas

ONCOR ELECTRIC DELIVERY COMPANY LLC

Employer

and Case 16-RD-1600

TARA O'NEAL, AN INDIVIDUAL

Petitioner

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS
LOCAL UNION 69

Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, the parties were notified of and waived their right to a hearing before an officer of the National Labor Relations Board, hereinafter referred to as the Board.[1] Pursuant to the provisions of Section 3(b) of the Act, the Board delegated its authority in this proceeding to the undersigned. Upon the entire record, in which all parties filed briefs, the undersigned makes the following findings and conclusions.

[1] The parties agreed to fourteen factual stipulations and the inclusion of eleven exhibits.

I. SUMMARY

The sole issue to be decided is whether a collective-bargaining agreement, entered into subsequent to the Employer's April 9, 2010, voluntary recognition of the Union as representative of a unit of its employees, acts as a bar to the petition for a decertification election, filed by an individual on June 18, 2010. As discussed below, I find that, pursuant to *Dana Corp.*, the contract does not bar the petition for a decertification election. 351 NLRB 434 (2007).

II. FACTS

On December 10, 2009, the NLRB certified Electrical Workers Local Union 69 (Union), a labor organization within the meaning of Section 2(5) of the Act, to represent both field service representatives and field service representative seniors employed by Oncor Electric Delivery Company LLC (Employer), a Delaware corporation, with facilities located throughout the State of Texas.

On April 8, 2010, the Union notified the Employer that it had disclaimed interest in representing the unit as defined by the December 10, 2009 certification. On April 9, 2010, the parties entered into a written voluntary agreement whereby the Employer recognized the Union as representing only its field service representatives and excluding its field service seniors. The parties agreed that the unit would be defined as follows:

> INCLUDED: All regular full-time field service representatives employed in the current service territory by Oncor Electric Delivery Company.
>
> EXCLUDED: All other employees, including field service representative seniors, crew foremen, technical employees, equipment operators assigned to the SOSF, office clerical employees, all employees in the classifications and divisions covered by the NLRB certifications in Case Nos. 16-R-951, 16-R-1078, 16-R-1079 and 16-RC-10746, all transmission employees, guards and supervisors as defined by the National Labor Relations Act, as amended.

On April 27, 2010, the NLRB sent a Notice to Employees to the Employer for posting. The notice advised the unit employees about the Employer's voluntary recognition of the Union and informed them of their right to file a representation petition with the National Labor Relations Board. On May 4, 2010, the Employer posted the Notice to Employees.

On May 14, 2010, the membership of the newly recognized unit ratified a memorandum of agreement (MOA) in which field service representatives would be covered by an already existing collective bargaining agreement which, at that time, covered other units of the Employer's employees. That collective-bargaining agreement is effective from January 28, 2008 through October 25, 2010. The Union and Employer signed the agreement on June 8, 2010.

On June 18, 2010, a decertification petition regarding the unit was filed by Petitioner Tara O'Neal. The parties agree that the petition was timely filed pursuant to *Dana Corp.*, 351 NLRB 434 (2007).

III. DISCUSSION

The bargaining relationship between the parties here is based upon voluntary recognition; therefore, I will discuss the controlling principles as announced by the Board in *Dana Corp.*[2] In *Dana Corp*., the Board modified its recognition bar doctrine to limit the circumstances in which elections were barred following an employer's grant of voluntary recognition to a union. The Board held that neither voluntary recognition itself, nor a contact between a union and an employer pursuant to voluntary recognition will bar a petition for a decertification election unless affected employees are provided with adequate notice of their right to file a decertification petition within 45 days and 45 days has passed from that notice. *Dana Corp.*, 351 NLRB at 434-435. The Board explicitly stated that "[i]f a valid petition supported by 30 percent or more of the

[2] It is irrelevant that the original unit was certified through an election because the Union disclaimed its interest in representing the original unit.

unit employees is filed within 45 days of the notice, it shall be processed." *Id.* at 434. The Board made clear that the contract bar doctrine would not affect the 45-day window, stating, "a collective-bargaining agreement executed on or after the date of voluntary recognition will not bar a decertification or rival union petition unless notice of recognition has been given and 45 days have passed." *Id.* at 435.

The Union makes two arguments against applying *Dana* in this case. First, the Union argues that the case is not analogous to *Dana*. The Union argues that *Dana* involved a voluntary recognition pursuant to a card-check, whereas here other assurances demonstrate the desire of the employees to be represented by the Union. The Union argues that the employees' desire was demonstrated through the Board certified election in December 2009, and then in a privately held secret ballot election that determined that the field service representative seniors did not desire inclusion, and again in the members' May 2010 ratification of the MOA. The December 2009 election does not provide adequate assurances because that was the vote of a different and now defunct unit. I will not address what, if any, effect the private secret ballot election would have on this matter because the stipulated facts are devoid of a reference to it. Finally, the members' ratification of the MOA does not necessarily indicate that the employees desire to be represented by the Union. Moreover, despite any additional assurances of the employees' desires, the fact remains that the parties' bargaining relationship is based on voluntary recognition, and therefore *Dana* controls my decision.

Second, the Union argues that *Dana* should be overturned. I am bound by Board law and will not address this argument. *Allstate Ins. Co.*, 332 NLRB 759, 768-769 (2000).

Thus, because the petition was duly filed within 45 days of notice, an election is appropriate. *Dana* is applicable and neither the Employer's voluntary recognition nor the

collective-bargaining agreement the parties entered into subsequent to that voluntary recognition acts as a bar to the election.

IV. CONCLUSION

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[3]

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> **INCLUDED:** All regular full-time field service representatives employed in the current service territory by Oncor Electric Delivery Company.
>
> **EXCLUDED:** All other employees, including field service representative seniors, crew foremen, technical employees, equipment operators assigned to the SOSF, office clerical employees, all employees in the classifications and divisions covered by the NLRB certifications in Case Nos. 16-R-951, 16-R-1078, 16-R-1079 and 16-RC-10746, all transmission employees, guards and supervisors as defined by the National Labor Relations Act, as amended.

[3] The Employer, Oncor Electric Delivery company LLC (Employer), is a Delaware corporation with facilities located throughout the State of Texas. During the past twelve months, a representative period, the Employer, in conducting its business operations, purchased and received at its Texas locations goods valued in excess of $50,000 directly from points located outside the State of Texas and gross revenues in excess of $250,000.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Brotherhood of Electrical Workers Local Union 69.**

A. *List of Voters*

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior*

Underwear, Inc., 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list for the unit, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must by received in Region 16, 819 Taylor Street, Room 8A24, Fort Worth, Texas, on or before **July 16, 2010.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (817) 978-2928. Since the list will be made available to all parties to the election, please furnish a total of **three** copies, unless the list is submitted by facsimile, in which case no copies need to be submitted. If you have any questions, please contact Region 16.

B. *Notice Posting Obligation*

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to

12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. *E-FILING*

The National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents, which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board website at www.nlrb.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-file your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

D. *Right to Request Review*

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **July 23, 2010**. The request may **not** be filed by facsimile.

Dated at Fort Worth, Texas this 9th day of July, 2010.

/s/ Martha Kinard

Martha Kinard, Regional Director,
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